

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

August 6, 2024

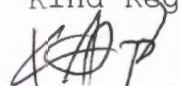
Clerk, US Dist. Ct. - DNJ
US Courthouse
4th and Cooper Streets
Camden, NJ 08101-2797

RE: Caleb L. McGillvary v. Nicholas Scutari et al
Civil Action No. 1:23-cv-26605-JMY
Hon. John Milton Younge, U.S.D.J.

Dear Clerk;

Please find enclosed and file onto the docket the original of my notice, declaration, proposed order, and motion in support of my motion for an order granting extension of time for service under Rule 4(m); and proof of service thereof; in the above-captioned matter.

Kind Regards,


Caleb L. McGillvary
In Propria Persona

ENCL:
CC: FILE

RECEIVED
AUG 12 2024
AT 8:30 M
CLERK, U.S. DISTRICT COURT - DNJ

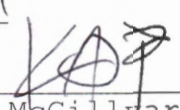
PROOF OF SERVICE

I, Caleb L. McGillvary, declare pursuant to 28 U.S.C. 1746 that on today's date, I placed in the institutional mailing system here where I'm incarcerated at NJ State Prison 3rd & Federal Streets Trenton, NJ 08625; with First Class Postage prepaid to be sent via USPS Mail; the original of my notice, declaration, proposed order, and motion in support of my motion for an order granting extension of time for service under Rule 4(m) to the Clerk of the District Court at USDC-DNJ US Courthouse 4th & Cooper Sts. Camden, NJ 08101-2797. Pursuant to the prison mailbox rule, these documents are constructively filed as of the date of mailing. Pursuant to DNJ Local Civil Rules, upon said filing the Clerk files Plaintiff's document into the CM/ECF system. See DNJ L.Civ.R. 5.2.2 ("All civil ... cases and documents filed in this Court, will be entered into the Court's ECF System in accordance with these Procedures."). Upon entry of a document in CM/ECF, notice of electronic filing thereof ("NEF"); is automatically thereby sent to all CM/ECF-participating parties. See DNJ L.Civ.R. 5.2.1(d) ("NEF is a notice automatically generated by the Electronic Filing System at the time a document is filed with the system..."). This NEF constitutes service upon all such parties. See DNJ L.Civ.R. 5.2.14(b)(1) ("Transmission of the NEF constitutes service of the filed document on Filing Users"). Therefore, pursuant to this Court's 3/21/24 order; ECF 12; on today's date I have constructively also served a copy of each said document on all appearing captioned Defendants, who are represented by CM/ECF-user Counsel, by the Clerk's filing of same and sending of NEF thereto.

I hereby invoke the prison mailbox rule.

I declare under penalty of perjury that the foregoing statements made by me are true and accurate.

Executed this 6th Day of AUGUST, 2024


Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ
08625-0861

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AUG 12 2024
AT 8:30
CLERK, U.S. DISTRICT COURT - DNJ

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Caleb L. McGillvary	)	CIVIL ACTION NO.
PLAINTIFF	)	1:23-cv-26605-JMY
	)	Hon. John Milton Younge, USDJ
V.)	
	)	Motion Date: To be determined
Nicholas Scutari et al	)	by the Court
DEFENDANT)	
)	

MOTION FOR EXTENSION OF TIME FOR SERVICE UNDER RULE 4 (m)

Caleb L. McGillvary ("Plaintiff"), hereby moves the Court for an order granting extension of time for service under Fed R. Civ. P. 4(m).

As grounds for this request, Plaintiff relies upon 28 U.S.C. 1915(d), which commands that the U.S. Marshal shall serve process on defendants in actions wherein the Plaintiff has been granted leave to proceed in forma pauperis, ("IFP"). See Also Rule 4(c)(3).

On 2/22/24, the Court granted Plaintiff's application to proceed IFP, and ordered that Plaintiff proceed IFP pursuant to 28 U.S.C. 1915. ECF 9.

Additionally, Plaintiff incorporates by reference his Declaration in support of this motion, and avers that it shows the following:

2.) On February 22, 2024, the Court issued an order directing the US Marshal to serve process upon all named defendants in this matter. I have been granted leave to proceed in forma pauperis, and have duly requested the Court to order that process be served by the Clerk and the US Marshal at public expense pursuant to 28 USC 1915(d); ECF 9.

3.) As of today's date, the Marshal has not communicated to me in any way, nor informed me of the status of service of process upon Netflix. Although the Clerk has served Judge Defendant Christine P. O'Hearn no other Judge Defendants have been served, even though she works in the same building as Defendant Renee Marie Bumb and could have been served simultaneously at that building on the same day. The clerk has not sent any requests for me to search for or update information or addresses. On this information, I believe that service upon numerous Defendants has not yet been effected by the Clerk and Marshal, and that more time is required for service to be effected. On this information, I also believe it is necessary for the Court to directly contact the Clerk and Marshal and ensure the Court officers are diligently pursuing service upon the Defendants which I have provided USM-285 forms for.

4.) I have acted with diligence in effecting service, which included asking numerous friends to help me scour the internet and private investigation databases for addresses at which to serve process upon the named defendants; filling out and submitting to the Clerk completed USM-285 forms for each appropriate named Defendant, updating same with new information any time the Clerk has indicated it was necessary. I have acted with good faith and diligent effort to effect service upon Defendants.

This motion follows.

Legal Argument

POINT I: THE COURT HAS ORDERED THE CLERK AND US MARSHAL TO EFFECT SERVICE UPON DEFENDANTS PURSUANT TO 28 U.S.C. 1915, AND PLAINTIFF HAS ACTED WITH DUE DILIGENCE AND GOOD FAITH IN COOPERATING WITH THE US MARSHAL AND PROVIDING EVERYTHING NECESSARY TO EFFECT SERVICE, YET SERVICE HAS NOT YET BEEN PERFECTED

The Court has already ordered that Plaintiff may proceed in forma pauperis; and that the US Marshal must serve process upon Defendants; ECF 9. Plaintiff has filled out the USM-285 forms in the manner required by the Court and by the US Marshal, and has provided paper copy of the forms as well as paper copies each of the summons, First Amended Complaint, and Appendix thereto, for all named Defendants: to the Clerk for forwarding to the US Marshal. Plaintiff has therefore complied with all procedural requirements for effecting service Pursuant to the Court's Order; ECF 64; and 28 U.S.C. 1915(d).

Notwithstanding all of the above, service has not yet been effected on all named Defendants, through no fault of

Plaintiff's. "An incarcerated pro se plaintiff proceeding in forma pauperis ... should not be penalized by having his or her action dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the[ir respective] duties" Puett v Blandford 895 F.2d 630, 635 (CA9 1990).

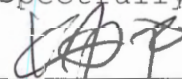
Conclusion

Plaintiff was granted IFP status by order of the Court. ECF 9. 28 U.S.C. 1915(d) requires the U.S. Marshal to effect service in cases where a pro se plaintiff is granted IFP status. Plaintiff dutifully complied with all procedural requirements, yet service has not yet been perfected. For these reasons, Plaintiff respectfully asks the Court to grant his motion for an order granting extension of time for service under Rule 4(m).

Date:

8/6/24

Respectfully Submitted,



Caleb L. McGillvary, ProSe
#1222665/SBI#102317GNJSP
PO Box 861, Trenton, NJ08625

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AT 8:30
CLERK, U.S. DISTRICT COURT - DNJ

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary)	
PLAINTIFF	)	CIVIL ACTION NO.
	)	1:23-cv-26605-JMY
V.	)	Hon. John Milton Younge, USDJ
)	
Nicholas Scutari et al	)	Motion Date: To be determined
DEFENDANT	)	by the Court
)	

DECLARATION IN SUPPORT OF MOTION FOR EXTENSION OF TIME
FOR SERVICE UNDER RULE 4 (m)

I, Caleb L. McGillvary, hereby declare pursuant to 28 U.S.C.1746 the following:

1.) I am the pro se plaintiff in the above-captioned matter.

2.) On February 22, 2024, the Court issued an order directing the US Marshal to serve process upon all named defendants in this matter. I have been granted leave to proceed in forma pauperis, and have duly requested the Court to order that process be served by the Clerk and the US Marshal at public expense pursuant to 28 USC 1915(d); ECF 9.

3.) As of today's date, the Marshal has not communicated to me in any way, nor informed me of the status of service of

process upon Netflix. Although the Clerk has served Judge Defendant Christine P. O'Hearn no other Judge Defendants have been served, even though she works in the same building as Defendant Renee Marie Bumb and could have been served simultaneously at that building on the same day. The clerk has not sent any requests for me to search for or update information or addresses. On this information, I believe that service upon numerous Defendants has not yet been effected by the Clerk and Marshal, and that more time is required for service to be effected. On this information, I also believe it is necessary for the Court to directly contact the Clerk and Marshal and ensure the Court officers are diligently pursuing service upon the Defendants which I have provided USM-285 forms for.

4.) I have acted with diligence in effecting service, which included asking numerous friends to help me scour the internet and private investigation databases for addresses at which to serve process upon the named defendants; filling out and submitting to the Clerk completed USM-285 forms for each appropriate named Defendant, updating same with new information any time the Clerk has indicated it was necessary. I have acted with good faith and diligent effort to effect service upon Defendants.

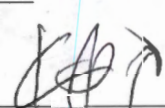
5.) For all the foregoing reasons, and for all the reasons in my attached motion, I request in good faith that the Court

should grant my motion for extension of time for service under Rule 4(m).

I declare under penalty of perjury that the foregoing statements are true and accurate.

Executed this 6th day of AUGUST, 2024

Date: 8/6/24


Caleb L. McGillvary, ProSe
#1222665/SBI#102317GNJSP
PO Box 861, Trenton, NJ
08625

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AT 8:30
CLERK, U.S. DISTRICT COURT - DNJ

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary
PLAINTIFF

V.

Nicholas Scutari et al
DEFENDANT

)
) CIVIL ACTION NO.
) 1:23-cv-26605-JMY
) Hon. John Milton Younge, USDJ
)
) Motion Date: To be determined
) by the Court
)
)

NOTICE OF MOTION FOR EXTENSION OF TIME FOR SERVICE
UNDER RULE 4(m)

TO: CLERK, ALL CAPTIONED PARTIES

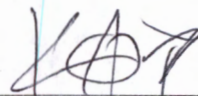
Please take notice that, on a date and time to be determined by the Court, Plaintiff Caleb L. McGillvary ("Plaintiff") hereby moves the Court for an order granting extension of time for service under Rule 4(m)

As grounds for this motion, Plaintiff relies upon his attached motion and declaration

A proposed form of order is lodged herewith

Date:

8/6/24


Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ
08625-0861

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Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary)	
PLAINTIFF	)	CIVIL ACTION NO.
	)	1:23-cv-26605-JMY
V.	)	Hon. John Milton Younge, USDJ
)	
Nicholas Scutari et al	)	Motion Date: To be determined
DEFENDANT	)	by the Court
)	

ORDER

THIS MATTER having been opened to the Court on motion by Plaintiff Caleb L. McGillvary for an order granting extension of time for service under Rule 4(m) in this proceeding, and the Court having considered the papers submitted and the arguments therein, and FOR GOOD CAUSE SHOWN

It is on this ____ Day of _____, 20__

ORDERED that Plaintiff's motion is hereby GRANTED; and it is further

ORDERED that the time for service of process be extended for an additional 60 days; and it is further

ORDERED that a copy of this order be served upon all parties appearing in this matter within 7 days of this order

Hon. John Milton Younge, U.S.D.J.

E McILVAIRY
#1222665/SB1#10215176
N5SP to BOX 861
TRENTON, NJ
08625



Trenton P&DC NJ 086
THU 08 AUG 2024 PM

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4TH & COOPER STS.
CAMDEN, NJ
08101 - 2797

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LEGAL MAIL